

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ANNETTE PADGETT,

Plaintiff,

V.

Cause No. 1:21-cv-00196-

ANONYMOUS, DNP, APRN-BC,
ANONYMOUS, MSW,
ANONYMOUS INTERN, and
ANONYMOUS SERVICES CORP.,

Defendants.

NOTICE OF REMOVAL

To: The Honorable Judge of the United States District Court for the Southern District of Indiana

Defendants the United States of America and the unnamed anonymous employees of Meridian Health Services Corp., by counsel, John E. Childress, Acting United States Attorney for the Southern District of Indiana, by Shelese Woods, Assistant United States Attorney, respectfully represent that the above-captioned cause now pending in the Delaware Circuit/Superior Court, Case No. 18C01-2010-CT-000111 is removed therefrom to this Court, under the provisions of 42 U.S.C. § 233 and 28 U.S.C. § 1442(a).

In support thereof, Defendants, by counsel, would show the Court that:

1. The Plaintiff has alleged that the Defendants have taken certain actions against her and her child; specifically, that they committed medical malpractice against her child resulting in death. *See* Complaint. As set forth in the Notice of Substitution filed contemporaneously with this Notice, the Defendants are employees of the United States of America and more specifically are Public Health Services employees pursuant to the Federally

Supported Health Centers Assistance Act of 1995, 42 U.S.C. § 233.

2. 42 U.S.C. § 233 provides that “[u]pon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of Title 28”

3. The Act also provides that the Federal Tort Claims Act is the exclusive remedy for state-law tort actions brought against Public Health Service employees acting within the scope of their employment. 42 U.S.C. § 233(a), (g); *see also Hui v. Castaneda*, 559 U.S. 799, 812 (2010) (“[T]he immunity provided by § 233(a) precludes Bivens actions against individual [U.S. Public Health Service] officers or employees for harms arising out of conduct described in that section.”).

4. 28 U.S.C. § 1442(a) also authorizes removal for any civil action commenced in a State court against the United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity. Here, the Attorney General through his designee has certified that the individually named Defendants were acting within the scope of their employment as Public Health Services employees at all times relevant to the Complaint.

5. Copies of pleadings and process served upon the United States Attorney in this matter are attached as Attachment 1.

6. This action is removable by the Defendants to this District Court under 42 U.S.C. § 233 and 28 U.S.C. § 1442(a).

WHEREFORE, the Defendants respectfully remove this action to federal district court.

JOHN E. CHILDRESS
Acting United States Attorney

By: s/ Shelese Woods
Shelese Woods
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, the foregoing was filed electronically through ECF/CM. On this same date, I have served as copy of the foregoing upon the following by first class mail, prepaid, and properly addressed to:

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